

IN THE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

ROY WIRTZ, ERIC BROWN, PETER	)	
REIMERS, and TIM DELANEY,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 3:11-cv-325-RLM-CAN
	)	
CITY OF SOUTH BEND, INDIANA,	)	
	)	
Defendant.	)	

**MOTION FOR PRELIMINARY INJUNCTION**

**COME NOW** Plaintiffs, by counsel, respectfully move this Court for a preliminary injunction in this cause, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining the City of South Bend, Indiana, from transferring and/or selling recently purchased property to the Catholic Diocese and/or St. Joseph's High School. In support of this Motion, the plaintiffs state as follows:

1. The challenged transaction is violative of the Establishment Clause of the First Amendment to the United States Constitution, as well as two (2) provisions of the Indiana Constitution, and the plaintiffs will meet their obligation to demonstrate a probability of success on the merits in this cause.
2. The plaintiffs are being and will be caused irreparable harm for which there is no adequate remedy at law absent a preliminary injunction.
3. The balance of interests favors the grant of a preliminary injunction in this matter.
4. The public interest will not be disserved by the grant of a preliminary injunction in this matter.

5. The preliminary injunction should issue without bond.
6. The plaintiffs intend to support this Motion with affidavits and/or other evidence and a memorandum of law which will be filed in the near future or pursuant to a schedule set by this Court or agreed to by the parties.
7. Counsel for the City of South Bend, Indiana (“the City”), has represented that the City will not transfer the property and/or complete the challenged transaction prior to September 9, 2011, and a decision on the present motion is therefore requested by that date.

**WHEREFORE,** the plaintiffs respectfully request that a preliminary injunction be granted in this cause, without bond, and request all other proper relief.

Respectfully submitted,

/s/ Gavin M. Rose

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*Attorneys for the plaintiffs*

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\* Application for admission *pro hac vice* to be filed.

**CERTIFICATE OF SERVICE**

I hereby certify, under penalties for perjury, that a true copy of the foregoing was forwarded to the following parties by first-class U.S. mail, postage pre-paid, on the 17<sup>th</sup> day of August, 2011:

City of South Bend, Indiana  
c/o Office of the Mayor  
227 W. Jefferson Blvd., Ste 1400 N  
South Bend, Indiana 46601

/s/ Gavin M. Rose\_\_\_\_\_

Gavin M. Rose  
Attorney at Law